

ESTTA Tracking number: **ESTTA314382**

Filing date: **10/30/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051532
Party	Defendant Juan B. Melendez III
Correspondence Address	Juan B. Melendez III 2008 Grant Ave #1 Redondo Beach, CA 90278 UNITED STATES DNShogun@gmail.com, juan@digitalninja.us, shogun@digitalninja.us
Submission	Other Motions/Papers
Filer's Name	Juan Melendez
Filer's e-mail	DNShogun@gmail.com, juan@digitalninja.us, shogun@digitalninja.us
Signature	/Juan B. Melendez III/
Date	10/30/2009
Attachments	Amndmnt_RQST_103009.pdf ( 2 pages )(88999 bytes )



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## **RESPONSE TO PICTURECODE LLC ATTORNEY LETTER**

**10/30/09**

Members of the Trademark Trial and Appeal Board,

PictureCode LLC's attorney, Katherine Klammer Madianos, filed a letter on October 5, 2009 in the Cancellation Proceeding, No: 92051432. In said statement, she alleges the Digital Ninja (Trademark Serial Number: 78938064) Request to Amend was "improperly filed with the USPTO immediately following the institution of the cancellation proceeding". In addition, PictureCode LLC's attorney attests she spoke with, "Sharon Granata, a supervisor at the PTO's Post Registration division, regarding the Request to Amend" and Sharon Granata "has informed the examiner of the pending cancellation proceeding...and indicated that the examiner will issue an office action refusing the amendment." To date, Juan B. Melendez III, owner of the Digital Ninja mark, has neither received confirmation of the Request to Amend the mark or an office action refusing the amendment, from the United States Patent and Trademark Office (USPTO).

Juan B. Melendez III, owner of the Digital Ninja mark, formally asks the Request to Amend be granted, as it was in fact, filed properly and without any prior knowledge of the *PictureCode LLC's* Petition to Cancel. As with all documents submitted to the USPTO via the Trademark Electronic Application System (TEAS), there is a unique timestamp which was applied to the Request to Amend. Juan B. Melendez III requests PictureCode LLC's Petition to Cancel document submission, filed with the Trademark Trials and Appeals Board (TTAB) via the Electronic System for Trademark Trials and Appeals (ESSTA), be examined for its electronically applied, unique timestamp. Juan B. Melendez III believes, based upon the information obtained, you will find the opposite to be true. PictureCode LLC's attorney, Katherine Klammer Madianos had in fact, filed the Petition to Cancel after the Request to Amend. Further, Juan B. Melendez III asks the Request to Amend be granted, as on Oct. 5<sup>th</sup>, 2009 personnel at the USPTO acted in such a manner, under no fault of their own, as to not take into account PictureCode LLC's attorney's position and motive, as a Plaintiff in a Petition to Cancel proceeding.

In addition, contained within the letter, PictureCode LLC's Attorney requests, "should the TTAB consider Registrant's Section 7 Request to Amend as a motion for amendment, or should Registrant file

an actual motion with the TTAB Requesting to Amend its DIGITAL NINJA registration, PictureCode, LLC reserves the right to respond.” As the amendment was filed prior, with the USPTO and not the TTAB, Juan B. Melendez III requests PictureCode LLC and its attorneys be barred from filing any motions against the Digital Ninja Trademark. It is the belief of Juan B. Melendez III, based on the facts and information, PictureCode LLC not be afforded any “right to respond”, as a Request to Amend is a legal function afforded to a registered owner of a Trademark, as stated in the Trademark Rules of the United States of America and should not be subjected to a motion in a Petition to Cancel proceeding.

If you have any questions, please contact: Digital Ninja LLC, ATTN: Juan B. Melendez III, 2008 Grant Ave #1, Redondo Beach, CA 90278, 310-663-9632, [shogun@digitalninja.us](mailto:shogun@digitalninja.us)

Thank you for your time.

Respectfully,

**/Juan B. Melendez III/**

Juan B. Melendez III

Presiding Member, Digital Ninja LLC

cc: Katherine Klammer Madianos, Esq., Kenneth G. Parker Esq., PictureCode LLC